

By: Murr

H.B. No. 352

A BILL TO BE ENTITLED

AN ACT

relating to the procedure by which a state agency may issue an opinion that a watercourse is navigable.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 11, Water Code, is amended by adding Section 11.098 to read as follows:

Sec. 11.098. OPINION OF NAVIGABILITY; NOTICE AND MEETING.

(a) Before a state agency, on its own or at the request of another governmental entity, may issue an opinion that a watercourse or a portion of a watercourse is a navigable stream for the purposes of this chapter, Chapter 21, Natural Resources Code, Chapter 138 (S.B. 150), Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), or Chapter 232 (S.B. 269), Acts of the 54th Legislature, Regular Session, 1955 (Article 5414a-1, Vernon's Texas Civil Statutes), the agency shall:

(1) either:

(A) perform or have performed by a licensed state land surveyor a gradient boundary survey of the watercourse or portion of the watercourse at issue; or

(B) obtain from the General Land Office a written opinion that a gradient boundary survey is not required in order to issue an opinion as to whether the watercourse or portion of the watercourse at issue is a navigable stream;

(2) provide to each person who owns land abutting or

1 lying along, across, or partly across the watercourse or portion of
2 the watercourse at issue written notice that:

3 (A) provides the name and address of the state
4 agency considering issuing the opinion on its own or the
5 governmental entity seeking the opinion, as applicable;

6 (B) identifies the geographic location of the
7 watercourse or portion of the watercourse at issue and the common
8 name of the watercourse;

9 (C) specifies the date, time, and location of a
10 public meeting to be held with regard to the opinion; and

11 (D) gives any additional information the agency
12 considers necessary; and

13 (3) at the date, time, and location stated in the
14 notice provided under Subdivision (2), hold a public meeting in
15 which:

16 (A) any person may appear in person or by
17 attorney or enter an appearance in writing;

18 (B) any person who appears may present objection
19 to or support for an opinion as to whether the watercourse or
20 portion of the watercourse at issue is a navigable stream;

21 (C) the agency receives evidence, orally or by
22 affidavit, in support of or in opposition to the opinion; and

23 (D) the agency provides information regarding
24 the date and location at which the agency will issue the opinion.

25 (b) The meeting must be held in a publicly accessible
26 location in a county in which the watercourse or portion of the
27 watercourse at issue is located and on a date that allows a

1 reasonable period after the notice of the meeting is provided but
2 not earlier than the 45th day after the date the notice is provided.

3 (c) After the meeting, the agency shall deliver to each
4 party to whom notice of the meeting is required to be given a
5 written opinion as to whether the watercourse or portion of the
6 watercourse at issue is a navigable stream. The opinion may be
7 issued with respect to all or part of the watercourse or portion of
8 the watercourse at issue.

9 (d) An opinion issued by a state agency as to whether a
10 portion of a watercourse is a navigable stream does not affect the
11 authority of that agency or another agency to issue an opinion as to
12 whether another portion of that watercourse is a navigable stream.

13 (e) Any party that is aggrieved by an opinion issued under
14 this section may appeal the opinion by filing a petition with the
15 district court of a county in which the watercourse or portion of
16 the watercourse at issue is located not later than the 60th day
17 after the date the opinion is issued. The hearing in such an appeal
18 before the district court shall be by trial de novo on all issues. A
19 petition filed under this subsection must be served on the state
20 agency that issued the opinion and on the governmental entity that
21 requested the opinion, if applicable.

22 SECTION 2. This Act takes effect September 1, 2017.